

11. A mattress able to pass an established fire protective test having a fire retarding construction, comprising barrier means releasable from said mattress to be separable therefrom and securable thereto, said barrier means extending around the entire periphery of said mattress to restrict entry of oxygen into the interior portions of said mattress, wherein said fire protective test is the ``Flammability Test Procedure for Mattresses For Use in Public Buildings'' described in Technical Bulletin 129 of the State of California.

In the Abstract:

A new Abstract is submitted herewith.

Remarks

Claims 1 - 10 have been amended and new Claim 11 has been added. Claims 1 - 11 are in the case.

Claim 1 was rejected under 35 U.S.C. 102(e) or (b) as being clearly anticipated by Bost et al or Glackin or Weingartner et al or Diaz or Mortensen et al (US 4463464, 4866799, 5632053, 6718583, 6609261). Claim 1 has been amended to claim a mattress that is able to pass a specific fire protective test, specifically one that has been established and is in existence which is supported by the description of this invention in the specification.

Claim 1 has also been amended to define the barrier means as extending around the entire periphery of the mattress.

The Bost et al reference discloses cushion covers for sofas and chairs that have upholstery fabric that is lined with a smolder resistant material to completely surround two welt cords and underlie the boxed, border or vertical area of the cushion cover. This cited reference does not disclose that the construction has passed or would be able to pass any established fire prevention test. It is not obvious from the disclosure how the Bost et al mattress could be modified to pass the established fire prevention test the mattress construction in the present application has been able to pass.

The Glackin reference discloses a mattress in which the steel springs are enclosed within a fire retardant capsule which is large enough to permit expansion of the springs without rupturing the fire retardant capsule. This reference does not disclose a mattress construction that is able to, or has been able to, pass any established fire prevention test. It is not obvious from the disclosure how the Glackin mattress could be modified to pass the established fire prevention test the mattress construction in the present application has been able to pass.

The Weingartner et al discloses an aircraft seat cushion that encapsulates the cushions within a cavity or pocket of flameproof materials. The construction is completely different from the construction disclosed in the present application. There is no disclosure in the Weingartner et al reference that its construction would be

able to, or has been able to, pass any already established fire retardant test. It is not obvious from the disclosure how the Weingartner et al mattress could be modified to pass the established fire prevention test the mattress construction in the present application has been able to pass, or to make the mattress construction disclosed and described in the present application.

The Diaz reference does disclose the same fire retardant test as disclosed in the present application. However, the Diaz reference does not disclose that the mattress construction described in that patent was subjected to that test, or that it was able to pass that test. The detail construction of the Diaz mattress is substantially different from the construction of the present invention which was subjected to and did pass the said fire retardant test. Claim 1 has been amended to define the barrier means of the present invention as being releasable from the mattress and separable therefrom, as well as securable to the mattress, which the Diaz reference does not disclose. It would not be obvious to make the present mattress construction in accordance with the present invention from what is disclosed in the Diaz reference.

The Mortensen et al reference discloses a mattress that can pass a different fire retardant test, described in lines 60 - 66 of Column 5 and lines 1 - 22 of Column 6 of that patent. The Mortensen et al patent does not disclose how a mattress construction as set forth in the present

application would be obvious from examining the Mortensen et al patent, nor how it would be obvious to make a mattress having a separable barrier means that would be able to pass the fire retardant test the mattress in accordance with the present invention was able to pass.

Claims 1, 8 - 10 were rejected under 35 U.S.C. 102(b) as being clearly anticipated by German document (DE3111839) or Wagner (US 4388738) or Wipo document (EP 0335199). The German patent document discloses a seat for vehicles having fireproof cushion materials enclosed within a fireproof covering. The back rest and the seat are shown in section, so the construction at the ends of the back rest and seat are not shown. The reference as such does not disclose that the fireproof coverings extend around the ends of the back rest and seat in such a way that the creases or folds of the fireproof material leading into the interior of the back rest and seat cushions along the side edges have been covered so as to provide the complete peripheral barrier that claim 1 as amended now requires. There is no disclosure that the vehicle seat in this reference is able to pass an established fire protective test, and it is not obvious from seeing this reference how one would go about making a mattress as set forth in the present application that would be able to pass the fire protective test described in the application.

The Wagner reference discloses a mattress having a heat panel, but it does not include any specific fire barrier

construction to prevent oxygen from getting into the interior of the mattress if the Wagner mattress were ever subjected to a fire prevention or fire retarding test. It would not be obvious from seeing the Wagner reference to think of making a mattress in accordance with the present invention which is directed to construction of a barrier means to prevent oxygen from getting into the interior part of the mattress during a fire prevention or fire retarding test or during a real time fire.

The Wipo document reference, 0 335 199, does not appear to be directed to a fire retardant mattress type of construction at all, but to means for connecting the outer edges of the upper and lower mattress covers together. If the connection means for connecting the outer edges is considered the equivalent of fire barrier means, the reference does not disclose that such connection means extends all the way around the entire periphery of the mattress as amended claim 1 now requires.

Claims 1 - 3 were rejected under 35 U.S.C. 102(b) as being anticipated by Suekoff or Karpen or Richards, Jr. (US 1755714, 4430765, 3818520). The Suekoff reference does not appear to refer to fire prevention or fire retarding at all, and in any event does not disclose a mattress that has been able to pass an existing or established fire prevention or fire retarding test. the Karpen and Richards patents do refer to fire retardant construction, but they do not claim or disclose a mattress construction that has been able to

pass an existing established fire protective test as amended claim 1 now requires. It is not obvious from examining the Suekoff, Karpen and Richards patents how to make a mattress in accordance with the present invention that is able to pass an established fire protective test.

Claims 4 - 7 were rejected under 35 U.S.C. 103(a) as being unpatentable over Suekoff, or Karpen, or Richards, Jr. in view of Strell (US 5432964). The reference patents do not disclose a mattress construction that has been able to pass an established fire protective test which Claim 1 as amended now requires. Claims 4 - 6 depend ultimately from Claim 1, and Claim 7 specifically includes that requirement. The same arguments made above are applicable to claims 4 - 7, which should be allowable over the cited references.

Claims 2 - 7 were rejected under 35 U.S.C. 103(a) as being unpatentable over Wipo document (EP 0335199). The Wipo document does not disclose a barrier means that extends around the entire periphery of the mattress, nor does it disclose a mattress construction that has passed any established fire protective test, as amended claim 1 and claims depending from claim 1 now require, as does claim 7 insofar as the established fire protective test is concerned. It would not be obvious upon seeing the Wipo document for one of ordinary skill in the art to think of making a mattress in accordance with the present invention which is able to pass an established fire protective test as disclosed in the specification.

A separate clean copy of the claims as now amended is submitted herewith, as is a new Abstract.

Reconsideration of this application is respectfully requested.

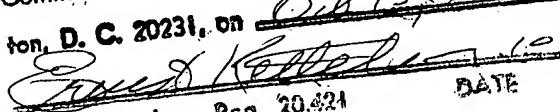
Respectfully submitted,


Ernest Kettelson Reg. No. 20421
Attorney for the Applicant

Date: October 15, 2004

Ernest Kettelson
KETTELSON LAW OFFICES, LTD.
Wynderidge Place
P.O. Box 2517
Joliet, Illinois 60434
Phone: 815-467-1400
FAX : 815-467-1461

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D. C. 20231, on October, 2004


Ernest Kettelson, Reg. No. 20421
DATE 10-15-04